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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

EDUCATION AND PUBLIC LANDS COMMITTEE PROPOSAL

No. X

Date Reported: Mar. 22, 1971

 Chairman
 Vice Chairman

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Date: February 22, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Education and Public Lands Committee

Ladies and Gentlemen:

The Education and Public Lands Committee submits herewith proposed new Articles on Education, Public Lands, and Investments. The proposed Articles are intended to replace the Education, Public Lands, and Trust and Legacy Fund Articles in the present constitution.

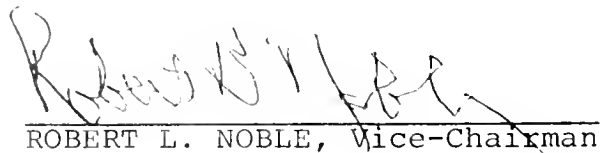
Throughout its hearings the committee heard a great deal of thoughtful, well-researched testimony and benefited fully from the many sources of information provided by interested persons and groups. Realizing the crucial importance of education in the state, the committee was guided by the desire to insure a solid foundation for public education in Montana and to allow for the flexibility essential to the educational process. The committee resolved almost all questions with few dissents. On two issues, however, the questions of public aid to sectarian schools and investments, the committee failed to reach agreement. The dissenting members are presenting minority reports included herein.

In signing this majority report a committee member does not necessarily endorse each and every statement in it.

The committee utilized the services of the following people in addition to its members: Sally Watson, secretary, Bruce Sievers, research analyst, and Jeffrey Rupp, Maureen Callahan, Nancy Lien and John Murphy, interns.

Respectfully submitted,


RICHARD J. CHAMPOUX, Chairman


ROBERT L. NOBLE, Vice-Chairman

MAJORITY PROPOSAL

1 BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

2 That there be a new Article on Education to read as
3 follows:

4
5 ARTICLE _____

6 EDUCATION

7 Section 1. EDUCATIONAL GOALS AND DUTIES OF THE STATE.

8 It shall be the goal of the people of Montana to provide
9 for the establishment of a system of education which will
10 develop the full educational potential of each person.
11 Equality of educational opportunity shall be guaranteed to
12 each person of the state.

13 The legislature shall provide for a system of high
14 quality free public elementary and secondary schools. The
15 legislature may also provide for other educational institu-
16 tions, public libraries and educational programs as are
17 deemed desirable. It shall be the duty of the legislature
18 to provide by taxation or other means and to distribute in
19 an equitable manner funds sufficient to insure full funding
20 of the public elementary and secondary school system.

21 Section 2. PUBLIC SCHOOL FUND. The public school
22 fund of the state shall consist of the proceeds of such
23 lands as have heretofore been granted, or may hereafter be
24 granted, to the state by the general government known as
25 school lands; and those granted in lieu of such; lands
26 acquired by gift or grant from any person or corporation
27 under any law or grant of the general government; and of
28 all other grants of land or money made to the state from
29 the general government for general educational purposes,
30 or where no other special purpose is indicated in such grant;

1 all estates, or distributive shares of estates that may
2 escheat to the state; all unclaimed shares and dividends
3 of any corporation incorporated under the laws of the state,
4 and all other grants, gifts, devises or bequests made to
5 the state for general educational purposes.

6 Section 3. PUBLIC SCHOOL FUND INVIOLEATE. The public
7 school fund shall forever remain inviolate, guaranteed by
8 the state against loss or diversion, to be invested under
9 the restrictions to be provided by law.

10 Section 4. BOARD OF LAND COMMISSIONERS. The governor,
11 superintendent of public instruction, secretary of state and
12 attorney general shall constitute the state board of land
13 commissioners, which shall have the direction, control,
14 leasing, exchange and sale of the school lands of the state,
15 and the lands granted or which may hereafter be granted for
16 the support and benefit of the various state educational
17 institutions, under such regulations and restrictions as
18 may be prescribed by law.

19 Section 5. PUBLIC SCHOOL FUND REVENUE. Ninety-five
20 per centum (95%) of all the interest received on the school
21 funds of the state, and ninety-five per centum (95%) of
22 all rents received from the leasing of school lands and
23 of all other income from the public school funds shall be
24 equitably apportioned annually to public elementary and
25 secondary schools as provided by law.

26 The remaining five per centum (5%) of all the interest
27 received on the school funds of the state, and the remaining
28 five per centum (5%) of all the rents received from the
29 leasing of school lands and of all other income from the
30 public school funds, shall annually be added to the public

1 school funds of the state and become and forever remain
2 an inseparable and inviolable part thereof.

3 Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS.

4 Neither the legislative assembly, nor any county,
5 city, town, or school district, or other public corpor-
6 ations, shall ever make directly or indirectly, any
7 appropriation, or pay from any public fund or monies what-
8 ever, or make any grant of lands or other property in aid
9 of any church, or for any sectarian purpose, or to aid in
10 the support of any school, academy, seminary, college,
11 university, or other literary, scientific institution,
12 controlled in whole or in part by any church, sect or
13 denomination whatever.

14 Section 7. NON-DISCRIMINATION IN EDUCATION. No
15 religious or partisan test or qualification shall ever be
16 required of any person as a condition of admission into
17 any public educational institution of the state, either as
18 teacher or student; nor shall attendance be required at
19 any religious service whatever, nor shall any sectarian
20 tenets be taught in any public educational institution of
21 the state; nor shall any person be debarred admission to
22 any public institution of learning on account of sex,
23 race, creed, religion or national origin.

24 Section 8. SCHOOL ELECTIONS. The legislative
25 assembly shall provide for elections of school district
26 trustees.

27 Section 9. STATE BOARD OF EDUCATION. The board of
28 public education and the board of regents of higher educa-
29 tion, as hereafter designated shall together constitute
30 the state board of education which shall meet periodically

1 on matters of mutual concern. In case of a tie vote at
2 such meeting the superintendent of public instruction may
3 cast a vote.

4 Section 10. BOARD OF PUBLIC EDUCATION. There shall
5 be a board of public education which shall exercise general
6 supervision over the public school system and such other
7 public educational institutions as assigned by law. Said
8 board shall consist of seven members appointed by the
9 governor with confirmation of the senate to six year over-
10 lapping terms. The governor and state superintendent of
11 public instruction shall be ex officio non-voting members
12 of the board. The duties of the superintendent of public
13 instruction shall be prescribed by law.


14 Section 11. BOARD OF REGENTS OF HIGHER EDUCATION.
15 There shall be a board of regents of higher education, a
16 body corporate, which shall govern and control the academic,
17 financial, and administrative affairs of the Montana univer-
18 sity system, and shall supervise and coordinate other
19 public educational institutions which may be assigned by
20 law. Said board shall consist of seven members appointed
21 by the governor to six year overlapping terms, subject to
22 confirmation by the senate, under regulations provided by
23 law. The board shall appoint its executive officer and
24 prescribe his term and duties. The governor and superin-
25 tendent of public instruction shall be ex officio non-voting
26 members of this board.

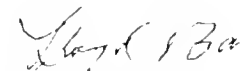
27 Section 12. STATE UNIVERSITY FUNDS. The funds of the
28 state university and of all other state institutions of
29 learning, from whatever source accruing, shall forever remain
30 inviolate and sacred to the purpose for which they were

1 dedicated. The various funds shall be respectively
2 invested under such regulations as may be prescribed by
3 law, and shall be guaranteed by the state against loss or
4 diversion. The interest of said invested funds, together
5 with the rents from leased lands or properties shall be
6 devoted to the maintenance and perpetuation of these
7 respective institutions.

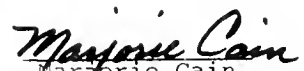
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Richard Champoux, Chairman


Robert Noble, Vice Chairman

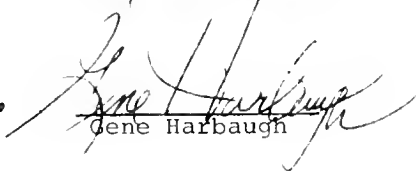

Lloyd Barnard


William Burkhardt


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Gene Harbaugh


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Robert Woodmansey

John Toole

1 COMMENTS ON MAJORITY PROPOSAL

2 Education occupies a place of cardinal importance in
3 the public realm. The educational system is charged with
4 the task of shaping and cultivating the mind of each succeed-
5 ing generation and with developing the capacities for
6 cultural and technical advancement of society. State and
7 local governments devote a far larger share of their finan-
8 cial resources to the support of education than to any other
9 single public activity.

10 Because of this overriding importance of education,
11 the committee recognizes the awesome task of providing the
12 appropriate constitutional provisions necessary to protect
13 and nurture the public educational system. Each aspect of
14 existing and proposed constitutional language was thoroughly
15 and deeply reflected upon by the committee in light of
16 present and future needs. Fundamental to the committee's
17 considerations were the twin goals of protecting the in-
18 tegrity of a quality educational system and allowing for
19 flexibility to meet changes as yet unknown but which will
20 certainly occur in future developments in the field of learning.

21 In light of these aims, the committee has preserved
22 those provisions in the existing constitution which have
23 proven worth and which pose no hindrance to potential develop-
24 ments. On the other hand, the committee has made revisions
25 in those places where it saw a definite need for constitu-
26 tional improvement. Some of these changes have to do with
27 basic aims of the educational system; others are concerned
28 with structural or administrative adaptations to changing
29 conditions in education. The most significant revisions are
30 a clear statement of educational goals of the state, a

1 mandate for the support of education allowing increased
2 financial flexibility, deletion of antiquated age and school
3 term restrictions, and a revised administrative structure
4 for both the public school system and for higher education.

5 The committee views these proposed changes as vital
6 to the quality and efficiency of education in Montana.
7 The proposed article provides appropriate guarantees to
8 the viability of the public school system, while leaving the
9 way open to future transformations in the educational process.

10 *Section 1. EDUCATIONAL GOALS AND DUTIES OF THE STATE.*

11 *It shall be the goal of the people of Montana to provide*
12 *for the establishment of a system of education which will*
13 *develop the full educational potential of each person.*
14 *Equality of educational opportunity shall be guaranteed to*
15 *each person of the state.*

16 *The legislature shall provide for a system of high*
17 *quality free public elementary and secondary schools. The*
18 *legislature may also provide for other educational institu-*
19 *tions, public libraries and educational programs as are*
20 *deemed desirable. It shall be the duty of the legislature*
21 *to provide by taxation or other means and to distribute in*
22 *an equitable manner funds sufficient to insure full funding*
23 *of the public elementary and secondary school system.*

24 COMMENTS

25 The proposed section by the committee would replace
26 Sections 1, 6 and 7 of the existing constitution. The
27 committee desires to broaden the goals set forth for an
28 educational system beyond those which might have been
29 appropriate for public schools at the time of writing the
30 existing constitution. The horizons of education are

1 constantly expanding. There has been a growing recognition
2 of educational rights which extend beyond arbitrary age
3 and school term limitations. Society has accepted the duty
4 to support a quality educational system, and courts have
5 stressed that it must be made available on approximately
6 equal terms. Thus, the committee proposes a new section
7 which takes into account the widened perspectives embodied
8 in these developments.

9 The first sentence, "It shall be the goal of the
10 people of Montana to provide for the establishment of a
11 system of education which will develop the full educational
12 potential of each person," is appropriate as a statement
13 of purpose for education in the state. Learning is gradually
14 being recognized as a process which extends from the early
15 months till the late years of life. A long range goal of
16 the state should be to foster and support this learning
17 process for all citizens to the maximum level possible in
18 any given era. The committee realizes that economic and
19 human resources may be insufficient at present to promote
20 learning "to the full educational potential of each person,"
21 but it feels strongly that the goal should be set forth as
22 an ideal to serve as a guide for educational development
23 in the state. All members of society should be ultimately
24 eligible for the benefits of enlightenment and skills
25 acquired through the educational process.

26 The subject of "equal educational opportunity" has
27 become a particularly important doctrine in modern education.
28 Recent federal, district and state court decisions have
29 interpreted the Fourteenth Amendment to the federal Con-
30 stitution as applying to educational financing. Under this

1 doctrine, the state must show a compelling interest to
2 maintain a classification system by wealth which inter-
3 feres with the individual's fundamental right to an educa-
4 tion. By this standard the courts have ruled that the
5 school district financing systems in four states violate
6 equal protection.

7 Montana's school financing system is similar to those
8 declared unconstitutional in the states where challenges
9 have been made. The same vast discrepancies in tax burdens
10 and educational support exist in Montana as exist elsewhere.
11 A recent study by the Office of the Superintendent of
12 Public Instruction (A Study of Basic Educational Program
13 Funding Methodology in Montana, January 1972) shows that
14 Montana school district wealth per ANB varies by as much as
15 a ratio of 10,000 to 1. The enormous differences in tax
16 bases mean that many rich districts can provide much better
17 educational facilities with lower tax rates. Some poor
18 districts must tax their residents three or four times as
19 much as rich districts to provide less than half as much
20 money per student. Clearly, the existing school founda-
21 tion program in Montana does not attain its aim of equali-
22 zing educational burdens and benefits. Indeed, the study
23 shows that in the state as a whole, foundation program
24 expenditures actually subsidize wealthier districts more
25 than poorer districts, aggravating factors which already
26 tend to make education a function of wealth.

27 This conforms to a national pattern in which states
28 spend on the average twice as much to educate the children
29 of the rich as to educate the children of the poor. Other
30 forms of barriers to equal educational opportunity, such

1 as cultural or linguistic factors in minority groups, may
2 also hinder the development of children on an equal basis.
3 Clearly the educational system must be directed to the
4 elimination of blatant injustices which may predetermine
5 a lifelong disadvantage. The principle of equal educational
6 opportunity, as a corollary to the right to equal protection
7 of the laws, stands as a fundamental maxim for the public
8 educational system.

9 It has been suggested that constitutional statement
10 of equal educational opportunity might be a mandate for
11 the attainment of an impossible ideal, and that such a
12 statement of principle could open the door to a welter
13 of demands for making public education absolutely equal
14 for every person in society on every level. This inter-
15 pretation, however, would represent an extreme and absurd
16 misconstruction of the meaning of the principle. The
17 principle of "equal educational opportunity" is no more
18 an abstract absolute than is the right to "equal protection
19 of the laws" or any other constitutionally guaranteed right
20 or freedom. No right is absolute; each must be considered
21 in connection with other rights and freedoms and in terms
22 of the social context to which it is applied.

23 In keeping with the rationale articulated in Serrano
24 v. Priest and other court decisions in this area, the
25 committee agrees with the exemplary words of a landmark
26 U.S. Supreme Court decision:

27 In these days, it is doubtful that any child
28 may reasonably be expected to succeed in life
29 if he is denied the opportunity of an education.
30 Such an opportunity, where the state has undertaken
to provide it, is a right which must be made
available to all on equal terms. [Brown v. Board
of Education. 347 U.S. 493 (1954)]

1 Likewise, the California Supreme Court held:

2 [I]ts uniqueness among public activities clearly demon-
3 strates that education must respond to the command of
4 the equal protection. [Serrano v. Priest, 96 Cal 601]

5 Both Brown and Serrano attacked the substantial disparities
6 in the educational systems under review and concluded that
7 neither race nor wealth could be used to impair the equal
8 right of children to an education. Neither of these cases
9 mandated some sort of precise equality of education for the
10 entire lifespan of the human being. The fundamental principle
11 established, however, is that every child should have approxi-
12 mately the same opportunity to receive an adequate basic educa-
13 tion. What this means in practice will be legislatively
14 defined in terms of prevailing social conditions.

15 The sentence, "the legislature shall provide for a
16 system of high quality free public elementary and
17 secondary schools," is a mandate to the legislature to
18 insure the existence of a quality basic educational system.
19 The word "quality" is an instruction to the legislature
20 to provide not simply a minimum educational system, but
21 one which meets contemporary needs and produced capable,
22 well-informed citizens. The word "free" is understood by
23 the committee to mean that those aspects of an elementary
24 or secondary education shall be free from cost which are
25 essential to those courses required by the school for
26 graduation.

27 The committee also believes that other educational
28 institutions and programs and libraries are important
29 parts of educational activity in the state. The particular
30 sorts of institutions and programs, however, must be
left for the legislature to determine, since changing

1 conditions may require a variety of endeavors.

2 The final sentence in Section 1 provides a vital
3 mandate to the legislature for the support of the public
4 school system. The committee feels that a strong
5 directive is necessary to insure the support of the public
6 elementary and secondary school system. The particular
7 type of financing system is a matter properly left to
8 legislative determination, but the fundamental principles
9 upon which such a system is based are matters of a con-
10 stitutional nature. The committee specifies three tenets
11 of a school financing system: (1) that taxation for
12 such a system be equitably apportioned; (2) that the
13 school funds be distributed in an equal manner; and
14 (3) that the funds supplied be sufficient to insure full
15 funding of the system.

16 The first two of these principles follow from the
17 meaning of "equal educational opportunity." Two aspects
18 of equal opportunity have been emphasized in the judicial
19 decisions: equality of tax burden for the support of
20 education and equality of distribution of educational funds.
21 A wide variety of particular school financing plans, from
22 a wholly state-financed program to a plan for substantial
23 redistricting, have been suggested to meet these criteria.
24 The selection of which plan best suits the situation in
25 Montana is a matter for the legislature to decide. The
26 constitutional language solely establishes norms for the
27 evaluation of such plans.

28 The third principle set forth by the committee, that
29 of full funding, is a mandate to insure that the public
30 school system will exist on a plane of equal quality

1 rather than of equal poverty. The maxim of "full funding"
2 is intended by the committee to require the establishment
3 of the school system on a realistic basis.

4 Once the needs for a basic quality system of ele-
5 mentary and secondary schools have been realistically
6 assessed, the state has the obligation to guarantee that
7 this minimum basic program be fully funded. This require-
8 ment would substitute rationality and equity for the
9 confusion and injustice which have often plagued school
10 finance systems in the past.

11 *Section 2. PUBLIC SCHOOL FUND. The public school*
12 *fund of the state shall consist of the proceeds of such*
13 *lands as have heretofore been granted, or may hereafter*
14 *be granted, to the state by the general government known*
15 *as school lands; and those granted in lieu of such; lands*
16 *acquired by gift or grant from any person or corporation*
17 *under any law or grant of the general government; and of*
18 *all other grants of land or money made to the state from*
19 *the general government for general educational purposes,*
20 *or where no other special purpose is indicated in such*
21 *grant; all estates, or distributive shares of estates that*
22 *may escheat to the state; all unclaimed shares and dividends*
23 *of any corporation incorporated under the laws of the*
24 *state, and all other grants, gifts, devises or bequests*
25 *made to the state for general educational purposes.*

26 COMMENTS

27 In securing assured sources of support for the
28 educational system, the committee agreed that constitutional
29 protection should be supplied to the public school fund.
30 Section 2 in the existing constitution has provided this

1 protection by itemizing the components of the fund and
2 unequivocally specifying that these contributing funds
3 shall be used for education. The name "public school
4 fund" which appears in this section is adopted as the
5 name to be used consistently hereafter in the constitution.

6 *Section 3. PUBLIC SCHOOL FUND INVIOLETE. The public*
7 *school fund shall forever remain inviolate, guaranteed*
8 *by the state against loss of diversion, to be invested*
9 *under the restrictions to be provided by law.*

10 COMMENTS

11 This section is identical to Section 3 of the
12 existing constitution, with the exception that the
13 constitutional investment restrictions are removed. The
14 committee is of the opinion that the investment policy
15 for the public fund is properly a legislative matter.
16 Beyond guaranteeing the inviolate character of the fund,
17 a constitutional provision cannot anticipate investment
18 policies appropriate to changing conditions. Moreover,
19 the existing language, "to be invested, so far as possible,
20 in public securities within the state, including school
21 district bonds, issued for the erection of school buildings,"
22 is both ambiguous and overly restrictive. The benefit
23 to the schools might be much greater if in any given
24 period the public school fund were otherwise securely
25 invested. Flexibility requires that such policy decisions
26 be made by the legislature.

27 *Section 4. BOARD OF LAND COMMISSIONERS. The governor,*
28 *superintendent of public instruction, secretary of state*
29 *and attorney general shall constitute the state board of*
30 *land commissioners, which shall have the direction, control,*

1 leasing, exchange and other activities within the
2 state, and the lands granted in this manner may be
3 granted for the support and benefit of the various state
4 educational institutions, under such regulations and
5 restrictions as may be prescribed by law.

6 COMMENTS

7 This section remains almost unchanged from the
8 original constitution. A board composed of four elective
9 officials, the governor, superintendent of public instruction,
10 attorney general, and secretary of state, serves an
11 important function in supervising the management of the
12 state school lands and the income derived from these lands.
13 The board while operating under this constitutional pro-
14 vision, has worked well in the past and would appear to
15 be able to do the same for the foreseeable future. The
16 only change deemed desirable at this time is the addition
17 of the word "exchange" to the list of activities within
18 the board's power. The need for this has become evident
19 in cases where the state has been prevented from making
20 advantageous exchanges of land by the omission of this
21 power from the present constitutional provision.

22 The committee also considered revising the membership
23 of the board, and particularly reducing the number of
24 members to three by the omission of the Secretary of State,
25 but decided that the four constitutionally named elective
26 officers were an important source of direct popular
27 control and that an even-numbered board requiring a
28 majority of three for a decision would emphasize the
29 principle of caution over that of expediency.

30 *Section 5. PUBLIC SCHOOL FUND REVENUE. Ninety-five*

1 (*Section 5*) *all the interest received on the school*
2 *fund of the state, and ninety-five per centum (95%) of*
3 *all rents received from the leasing of school lands and*
4 *of all other income from the public school funds shall be*
5 *equitably apportioned annually to public elementary and*
6 *secondary schools as provided by law.*

7 *The remaining five per centum (5%) of all the interest*
8 *received on the school funds of the state, and the remaining*
9 *five per centum (5%) of all the rents received from the*
10 *leasing of school lands and of all other income from the*
11 *public school funds, shall annually be added to the public*
12 *school fund of the state and become and forever remain*
13 *a part of the public and inviolable part thereof.*

14 COMMENTS

15 The proposed Section 5 is a shortened and revised
16 version of Section 5 in the present constitution. The
17 intent of the provision, to constitutionally protect the
18 interest and income from the public school fund, is
19 important; however the particular restrictions as to its
20 distribution to schools are considered obsolete in light
21 of present conditions. The language concerning the portions
22 to be distributed and that which is to be reinvested re-
23 mains the same as in the present constitution. The methods
24 of distribution previously specified are replaced by a
25 general phrase "shall be equitably apportioned annually
26 to elementary and secondary schools as provided by law."

27 The replacement language provides the desired
28 flexibility to the legislature to develop school financing
29 programs in tune with current necessities. Particularly
30 relevant to this change is the trend across the nation,

1 in accordance with recent court decisions under the equal
2 protection doctrine, to provide more equitable school
3 financing systems. The "flat grant" type of aid provided
4 under the old method of distributing income and interest
5 to all school districts on a census basis is clearly anti-
6 equalizing under the standards discussed in the commentary
7 to Section 1. By specifying only that the distribution
8 must be "equitable" the new language allows the legislature
9 to determine the type of distribution which will attain
10 this goal.

11 Restrictions in the form of specified districts, age,
12 and school terms which may have been applicable at the
13 time of writing of the 1889 constitution, are no longer
14 meaningful. Rather than attempt to apply new restrictions
15 more in keeping with the contemporary school system, the
16 committee determined that it was preferable to allow for
17 changing needs as interpreted by the legislature by desig-
18 nating only a broad standard, namely "equitably apportioned
19 as provided by law."

20 A further element in the distribution system authorized
21 by the existing provision is the specification that the
22 interest and income money be distributed to the "several
23 school districts." This has been interpreted in the past
24 to mean that funds deriving from this source be granted
25 only to elementary schools, presumably because elementary
26 schools were the only public schools in existence at the
27 time when this provision was written. In keeping with
28 its intention to expand legislative possibilities in
29 educational finance, as discussed in the commentary on
30 Section 1, the committee has replaced the phrase

1 "several school districts" with "public elementary and
2 secondary schools." This would change the existing
3 distribution system to include high schools as recipients
4 of interest and income money. The immediate result is
5 anticipated by the Office of the Superintendent of Public
6 Instruction to result in a net saving of administrative
7 costs to the state. (See appendix E.)

8 *Section 8. AID PROHIBITED TO SECTARIAN SCHOOLS.*

9 *Neither the legislative assembly, nor any county, city,*
10 *town, or school district, or other public corporations,*
11 *shall ever make directly or indirectly, any appropriation,*
12 *or pay from any public fund or monies whatever, or make*
13 *any grant of lands or other property in aid of any church,*
14 *or for any sectarian purpose, or to aid in the support*
15 *of any school, academy, seminary, college, university,*
16 *or other literary, scientific institution, controlled in*
17 *whole or in part by any church, sect or denomination*
18 *whatever.*

19 COMMENTS

20 After long and serious consideration, a majority
21 of the committee decided to retain the section in the
22 existing constitution (Article XI, Section 8) which
23 strongly prohibits direct or indirect aid from any public
24 fund of the state to any sectarian educational institution
25 or for any sectarian purpose. The committee recognizes
26 the merit and thoughtfulness of arguments offered for and
27 against any change in this section, but agrees fundamentally
28 that any alteration in wording might jeopardize the pre-
29 carious historical balance which has been struck between
30 opposing doctrines and countervailing principles.

1 The following major points are the most important
2 reasons for the committee's decision:

3 (1) The primary and significant advantage secured by the
4 present provision is the unequivocal support it provides
5 for a strong public school system. The traditional separa-
6 tion between church and state, an important part of the
7 American social framework, has also become a fundamental
8 principle of American education. The growth of a strong, uni-
9 versal, and free educational system in the United States has
10 been due in part to its exclusively public character. Under
11 federal and state mandates to concentrate public funds in pub-
12 lic schools, the educational system has grown strong in an
13 atmosphere free from divisiveness and fragmentation. Any diver-
14 sion of funds or effort from the public school system would
15 tend to weaken that system in favor of schools established for
16 private or religious purposes.

17 (2) Education is primarily a function of the state and
18 is properly regulated by the state. The state is therefore
19 free to impose its own restrictions and rules upon the
20 use of public funds for education. Although the Montana
21 provision is more stringently prohibitive than is the
22 federal First Amendment and provisions in some other
23 states, this is within a state's prerogative. A state
24 may prohibit forms of state aid which might be permissible
25 under federal Supreme Court rulings.

26 (3) Any change in the present provision, whether
27 substantial or merely formal, might endanger passage of
28 the entire constitution. The church-state issue, which is
29 interwoven with the question of public aid to nonpublic
30 schools, stirs deeply held emotional feelings in various

1 sectors of the public. The emotionalism aroused over
2 potential debates on this question might obscure other
3 important issues in education and in the constitution as
4 a whole. The change in this area proposed in New York's
5 1967 constitution is thought to have been a significant
6 contributing factor to the constitution's defeat at the
7 polls. A large number of witnesses, representing various
8 religious and nonreligious organizations, testified
9 emphatically against any change in the present provision.

10 (4) Public aid to sectarian schools which might
11 result from a relaxation of the prohibition also poses a
12 potential threat to religion. The control which comes
13 with aid could excessively involve the state in religious
14 matters and could inadvertently favor one religious group
15 over another. Several witnesses testified that they
16 opposed aid not only from the standpoint of the protection
17 of the state from religious influence but also from the
18 standpoint of the protection of religion from political
19 influence.

20 The above reasons apply to the decision by the
21 majority of the committee to preserve the present provision,
22 rather than to adopt the language of the federal First
23 Amendment or make any other change in the existing provision.

24 A second alternative considered by the committee
25 was to exclude federal funds administered by the state
26 from the applicability of the provision. A fundamental
27 concern expressed by some witnesses before the committee
28 was that some forms of federal aid to nonpublic schools,
29 particularly of the type envisaged in "revenue sharing"
30 programs, are or would be prohibited under the existing

1 provision. The committee does not agree that this poses
2 a realistic problem. As indicated in Appendix F, students
3 in nonpublic educational institutions in the state are
4 now receiving the benefit of a significant amount of
5 federal aid, some of which is administered by the state.
6 It is the majority of committee's opinion that presently
7 operating federal aid programs in education are not
8 being significantly affected by the constitutional pro-
9 vision. As to future federal programs, the committee
10 feels that precedent shows that potential problems can be
11 resolved without a change in the constitutional provision.
12 No specific case was brought to the committee's attention in
13 which federally granted funds have been denied in Montana
14 to nonpublic schools because of the operation of the
15 existing constitutional provision.

16 *Section 7. NON-DISCRIMINATION IN EDUCATION. No*
17 *religious or partisan test or qualification shall ever*
18 *be required of any person as a condition of admission into*
19 *any public educational institution of the state, either*
20 *as teacher or student; nor shall attendance be required*
21 *at any religious service whatever, nor shall any sectarian*
22 *tenets be taught in any public educational institution*
23 *of the state; nor shall any person be debarred admission*
24 *to any public institution of learning on account of sex,*
25 *race, creed, religion or national origin.*

26 COMMENTS

27 This section is a broadened version of the present
28 Section 9. A statement specifically banning discrimina-
29 tory practices in education provides a necessary specifi-
30 cation with respect to teachers and students of

1 nondiscrimination principles broadly articulated in the
2 bill of rights. The committee feels that the principle
3 set forth in the last sentence of the present section
4 i.e., "nor shall any person be debarred admission to any
5 of the collegiate departments of the university on account
6 of sex," represents an arbitrary limitation on the general
7 principle of nondiscrimination in admission policies.

8 The committee has therefore broadened the language to in-
9 clude all public educational institutions under the pro-
10 tection of the provision and to prohibit other kinds of
11 possible discrimination.

12 The committee also considered carefully the language
13 of the phrase, "nor shall any sectarian tenets be taught
14 in any public educational institution," and decided against
15 any change in wording. There has been no record of diffi-
16 culty in the interpretation of the meaning of this pro-
17 vision, which clearly is not intended to restrict objective
18 learning about religious principles, but rather to prohibit
19 the active promotion in a public school of religion or of
20 any particular religious doctrine. The existing language
21 adequately expresses this principle.

22 *Section 8. SCHOOL ELECTIONS. The legislative assembly*
23 *shall provide for elections of school district trustees.*

24 COMMENTS

25 This section is similar to Section 10 of the existing
26 constitution, but changes its effect. The original intent
27 of the present Section 10 was to segregate school elections
28 from partisan elections. The committee feels that there
29 are other reasons which negate this original intent and
30 which dictate that decisions on this matter should be of

1 a legislative rather than a constitutional nature. First,
2 it is questionable whether the holding of separate
3 elections has the effect of insulating school issues from
4 partisan ones. Other nonpartisan issues and candidates
5 appear on the same ballot with partisan ones. Moreover,
6 partisanship of various sorts may play a role in a school
7 election whether held separately or not. At least one
8 locality in Montana officially recognizes special parties
9 just for the purposes of such school elections.

10 Secondly, the holding of separate school elections
11 causes most localities a great deal of extra expense which
12 could be better spent on education itself. One delegate
13 informed the committee that her community spent \$10,000
14 or more on every school election. The committee feels
15 that such expenses are needless, particularly if the
16 separate election does not accomplish its intended aims.

17 The proposed new section thus allows for flexibility
18 by leaving the specification of election dates to the
19 legislature, but it still reaffirms the importance of a
20 constitutional mandate that such elections shall continue
21 to be held. The committee understands the vital importance
22 of the principle of local control of schools and desires
23 to insure the continuation of the system of local election
24 of school trustees. These local school elections are an
25 essential and irreplaceable part of the education system
26 and their existence must be constitutionally guaranteed.

27 *Section 9. STATE BOARD OF EDUCATION. The board of*
28 *public education and the board of regents of higher educa-*
29 *tion, as hereafter designated shall together constitute*
30 *the state board of education which shall meet periodically*

1 on matters of mutual concern. In case of a tie vote at
2 such meeting the superintendent of public instruction may
3 cast a vote.

4 COMMENTS

5 Sections 9, 10, and 11 of the proposed new article
6 deal with the state administrative structure for education.
7 Together, these sections provide a substantially revised
8 framework for the operation of the educational system.
9 Under the authority of Section 11 of the existing con-
10 stitution, a single state board of education presently
11 exercises "supervision and control" over the entire state
12 educational system, sitting as the state board of education
13 on matters concerning the public school system and as
14 ex officio board of regents on university matters. The
15 proposed sections would replace this structure with two
16 boards which would separately supervise higher education
17 and the public school system, but would meet jointly as
18 the state board of education on matters of mutual concern.

19 The proposed structure would provide a much needed
20 reform in the administration of education in Montana. The
21 state board of education, as it presently exists, operates
22 under a provision written at a time (1889) when the
23 educational system was fundamentally different from what
24 it is today. The educational system of Montana in the
25 nineteenth century consisted only of primary grammar schools
26 and a newly founded state university. Today it consists
27 of a universal system of elementary and secondary schools
28 and a public higher educational system composed of two
29 major universities, four colleges, and three community
30 colleges. In 1889 there were less than 12,000 students in

1 the public educational system; in 1970 there were more
2 than 200,000 students enrolled. At the time statehood
3 was granted Montana, the Office of the Superintendent of
4 Public Instruction consisted of the Superintendent and
5 a clerk who performed mainly information-gathering
6 functions in connection with local districts; at present
7 the Office has a staff of 162 and administers more than
8 \$52 million funds for a vast array of state educational
9 programs.

10 The provision for a board which was appropriate to
11 the 1889 situation is clearly not appropriate today. It
12 is not even clear that the state board of education was
13 ever intended to serve as the board for the entire
14 educational system. The phrase, "and the various other
15 state educational institutions" in the existing Section 11,
16 appears to refer only to what are commonly thought to be
17 state-run institutions, i.e. state normal schools, school
18 for the deaf and blind, and so forth. It was only by
19 virtue of a Montana Supreme Court interpretation of this
20 phrase in State v. Cooney (102 Mont. 521 [1936]) that this
21 section was specifically ruled to apply to the elementary
22 and secondary school system.

23 In practice, the state board of education has devoted
24 the great majority of its time to matters of higher educa-
25 tion. One important study of Montana education observes
26 that there is a kind of informal division of labor between
27 the board and the state superintendent, such that the lower
28 schools are looked after by the superintendent and that
29 the board sees its duties primarily in the field of higher
30 education. The study concludes:

1 The result is that the Board's functions in
2 public education become more of the nature of
3 "trouble shooting" and too little of consis-
4 tent long-range planning, policy formulation,
5 appraisal, and the like. (Montana Taxation-
6 Education Commission, Public Schools of Montana,
7 1958, p.2).

8 One major reason, therefore, for the creation of a
9 two-board structure is the establishment of a board that
10 will be specifically qualified for and concerned with the
11 problems of elementary and secondary education and other
12 institutions which may be assigned by law. The correlate
13 of this structure is the establishment of a separate board
14 for higher education which will be similarly qualified
15 for and attuned to the particular problems of higher educa-
16 tion.

17 The necessary coordination between these two separate
18 boards would occur in the joint board provided for in the
19 proposed Section 9. This joint board, the state board
20 of education, would meet periodically to act on matters
21 of mutual concern to both sectors of education.

22 Further reasons for the reorganization of the boards
23 of education are presented in the following sections.

24 *Section 10. BOARD OF PUBLIC EDUCATION. There shall*
25 *be a board of public education which shall exercise*
26 *general supervision over the public school system and such*
27 *other public educational institutions as assigned by law.*
28 *Said board shall consist of seven members appointed by*
29 *the governor with confirmation of the senate to six year*
30 *overlapping terms. The governor and the state superin-*
tendent of public instruction shall be ex officio non-
voting members of the board. The duties of the super-
intendent of public instruction shall be prescribed by law.

1 This section creates the board of public education
2 and prescribes its membership and responsibility. As
3 described in the comments to the preceding section, the
4 greatly expanded activities, personnel, and funding in-
5 volved in elementary and secondary education require that
6 this crucial sector of education have its own administra-
7 tive board. The largest share of state funds for any one
8 purpose go to elementary and secondary education. The
9 state administers over 25 major federal programs in edu-
10 cation. The kinds of education needed and offered are
11 constantly changing and expanding. A board which is to
12 cope adequately with this vast area of responsibilities
13 must consist of members who are qualified and who have
14 sufficient time to become knowledgeable about the
15 particular problems and issues of public education. A
16 board is no more capable than is a superintendent of
17 being competent to administer two fundamentally different
18 areas of education.

19 The need for a separate board for public education
20 promises to become even greater in the future. The
21 present trends indicate the assumption of much greater
22 role in educational financing by state and federal
23 governments, possibly as much as 90 percent or more of
24 total public school costs. Other trends also suggest an
25 increasing centralization in education. This means an
26 even greater degree of potential control of education at
27 the state level. A well-informed and representative board
28 would provide a much-needed balance to decisions on
29 administrative policies.

30 A large majority of witnesses who testified on the

1 subject, including key state officials and many educators,
2 spoke in favor of the two-board concept. They agreed that
3 both from the standpoint of public education and from that
4 of higher education, the separation of functions is
5 eminently sensible. A former chairman of the state board
6 of education, a long-time distinguished member of the board,
7 articulated the position of many:

8 Please give every consideration to a two-board
9 system. Frankly, even the most capable, dedi-
10 cated board member finds it impossible to do
11 justice to the total assignment. (Letter from
12 Mr. M. E. Richard, February 15, 1972)

13 Numerous studies of the Montana educational system
14 have recommended the creation of two boards. A legisla-
15 tive council report in 1960 resulted in the proposal for
16 a constitutional amendment to create two boards. The
17 amendment was passed by the legislature but kept off the
18 ballot for other reasons. The Legislative Council's
19 recommendation, which was based on previous studies, offered
20 the following major justification for a two-board system:

21 Increased demands on our educational facilities
22 due to a growing population and inflationary
23 pressures require that the responsibility for the
24 administration of our educational system be divided
25 into two boards, a Board of Education whose responsi-
26 bility would be primary and secondary education,
27 and a Board of Regents whose responsibility would
28 be higher education. There is a limit to the
29 amount of time a lay board member can devote to
30 these responsibilities. The overwhelming responsi-
bility placed on board members has prevented them
from devoting adequate time to the consideration
of policy questions. (Montana Legislative Council,
Higher Education, Report Number 5, Helena, 1960,
p.1)

The fear has been expressed that a separate board
for public education might usurp the powers of local boards.
There is no reason to be concerned about such a possibility,
however, since the powers granted the state board would be

1 almost identical to those now granted. Indeed, the
2 committee has actually deleted the word "control" from
3 the powers now granted the board so that the new section
4 reads, "exercise general supervision over the public
5 school system." It would be difficult to argue that this
6 grants any additional powers to the state board at the
7 expense of local school boards.

8 Under existing law, vocational-technical centers
9 will remain within the public school system and thus under
10 the jurisdiction of the board of public education. Wit-
11 nesses from the "vo-tech" field assured the committee that
12 this was their preference at the present time. However,
13 the language of this section and of the new Section 11
14 allows sufficient flexibility so that, should conditions
15 change, these institutions could be accommodated in the
16 system of higher education.

17 The voting members of the board would consist of
18 seven members selected by the governor for six-year over-
19 lapping terms. The governor and superintendent retain
20 ex officio membership on the board but in a nonvoting
21 capacity. The committee feels that the elective officials
22 should be separate from board decision-making, but should
23 retain membership on the board for informational and
24 coordinating purposes.

25 The committee feels that the duties of the superin-
26 tendent should be legislatively prescribed, to allow for
27 changing conditions and possible alterations of the
28 relationship between the board and the superintendent.
29 It is fully expected by the committee that the office of
30 the superintendent of public instruction will be provided

1 for in the executive article. A majority of the committee
2 feels strongly that the superintendent should be elected,
3 and the committee has structured the educational article
4 with this notion in mind. An elected superintendent pro-
5 vides a necessary direct link to the people which is
6 important to the educational system.

7 *Section 11. BOARD OF REGENTS OF HIGHER EDUCATION.*

8 *There shall be a board of regents of higher education, a*
9 *body corporate, which shall govern and control the academic,*
10 *financial, and administrative affairs of the Montana univer-*
11 *sity system, and shall supervise and coordinate other*
12 *public educational institutions which may be assigned by*
13 *law. Said board shall consist of seven members appointed*
14 *by the governor to six year overlapping terms, subject to*
15 *confirmation by the senate, under regulations provided by*
16 *law. The board shall appoint its executive officer and*
17 *prescribe his term and duties. The governor and superin-*
18 *tendent of public instruction shall be ex officio non-voting*
19 *members of this board.*

20 COMMENTS

21 The second fundamental component of the proposed
22 new state administrative structure for education is a
23 board of regents of higher education. The same reasons
24 which apply to the need for specialization and concen-
25 tration on the public school board hold also for the board of
26 regents. Higher education is fundamentally different from
27 public school education--in goals, curriculum, financing,
28 control, and operation--and it must be administered accord-
29 ingly. There is very little in common between the public
30 school system and higher education, other than a shared

1 need to provide a smooth transition for students between
2 the two systems.

3 A recognition of the particular needs and problems of
4 higher education has led all but two states to establish
5 separate state governing boards for higher education.
6 Montana and Idaho remain the only two states which retain
7 a single board for both public schools and the university
8 system. Some states have more than two boards for their
9 educational systems, and the generally recognized principle
10 is that different educational tasks require different
11 administrative structures.

12 As noted in the comments to the previous section,
13 major studies of education in Montana have recommended the
14 creation of two separate boards. The Durham Report on
15 higher education (G. Homer Durham, The Administration of
16 Higher Education in Montana, Helena, Montana, Legislative
17 Council, 1958), for instance, described the difficulties
18 of a state board which was unable to deal satisfactorily
19 with both areas of education. As a result of the recommenda-
20 tions of the Durham Report, the legislature passed a law
21 which divided the board into two parts, one of which sits
22 as the state board of education, and one of which sits as
23 the ex officio board of regents. This name-shuffling, how-
24 ever, has done little to alleviate the difficulty inherent
25 in a dualistic board.

26 In addition to administrative questions, another funda-
27 mental reason exists for the establishment of a separate
28 board of regents of higher education. Higher education is
29 not simply another state service; the administrative
30 structure of higher education cannot be considered an

1 ordinary state agency. The unique character of the
2 college and university stands apart from the business-as-
3 usual of the state. Higher learning and research is a
4 sensitive area which requires a particular kind of protection
5 not matched in other administrative functions of the state.

6 Few would dispute the vital importance of academic
7 freedom to the process of higher learning. Such freedom
8 is the essence of the American higher educational system.
9 Only in an atmosphere of independent and unfettered inquiry
10 can an objective pursuit of knowledge be conducted which
11 is unhindered by prejudice and vested interest. The great
12 contributions to both scientific and humanistic learning
13 which have emerged from American colleges and universities
14 can be attributed in large part to the freedom traditionally
15 enjoyed by the teachers and students in such institutions.

16 This was the idea implicit in the founding of both
17 private and public colleges and universities in the
18 United States, and it is an idea which still prevails.
19 The society as a whole accepts the principle unreservedly;
20 rarely does a direct attack come upon the concept of free
21 inquiry. However, a more subtle kind of coercion has made
22 its appearance, and it is of the sort which is likely to
23 become an even greater threat to the integrity of higher
24 education in the future. This is the growing power of
25 the centralized, bureaucratic state. Without overtly
26 intending to curtail freedoms, the modern state has absorbed
27 an increasing amount of power and control in the name of
28 efficiency. A pervasive form of influence and manipula-
29 tion has grown hand in hand with the emerging predominance
30 of the government form and the computer.

1 A warning of this social trend was voiced in a land-
2 mark study of the condition of the American university
3 conducted in the late 1950's under the chairmanship of
4 Dr. Milton Eisenhower under a Ford Foundation grant. The
5 study described a variety of creeping controls on univer-
6 sity systems which have appeared in recent years across
7 the country. It warns that, "strict" adherence by institu-
8 tions of higher learning to a bewildering array of centralized
9 bureaucratic controls will ultimately endanger the academic
10 as well as the administrative freedom of the college"
11 (Malcolm Moos and Francis E. Rourke, The Campus and the
12 State, Baltimore: The John Hopkins Press, 1959, p.6.)
13 Among the sources of growing controls which increasingly
14 impinge on universities are state budget offices,
15 state auditors, comptrollers, purchasing departments, per-
16 sonnel offices, central building agencies, and a variety of
17 older forms of control, such as legislative riders, which
18 are being used in new ways to affect colleges and universities.
19 The informal controls associated with these direct means
20 often exert an even stronger influence on the educational
21 process.

22 The study concludes that the maintainance of the
23 system of higher education free from unnecessary bureaucratic
24 and political interference is important not only to a
25 healthy academic atmosphere but also to the administrative
26 efficiency of the system of higher education:

27 Creative research, by its very nature, requires
28 freedom to move in a different direction if the
29 facts uncovered require it. The farther away
30 budget authority lies and the more time-con-
suming it is to get permission for such changes,
the less will be accomplished. Research and in-
struction at the higher levels, are not services

1 for which specifications can be written in advance,
2 and for which one seeks the lowest bidder. They
3 are venture capital investments where one success-
4 ful strike in a multitude, either in the form of
5 a new ideal, or a trained individual capable of
6 producing them, may spell the difference between
7 a forward-moving or a retrograding nation. (p.316)

8 The power to coordinate and operate the system of
9 higher education is one which belongs properly to an in-
10 formed board of regents who have the knowledge and ability
11 to determine rationally the course of higher education.
12 Master plans have been suggested for the guidance of
13 higher education in Montana but have failed to be applied
14 because of a lack of power on the part of the board for
15 their implementation. A board of regents empowered to
16 carry out its informed judgements would be an important
17 force for efficiency in the higher educational system.

18 It is this factor of efficiency which is highlighted
19 in the study chaired by Dr. Eisenhower. The primary
20 conclusion of the study is that freedom actually enhances
21 efficient operation of a university system:

22 [T]he fact that higher education very largely
23 owes its autonomous position in state govern-
24 ment to the belief that freedom promotes rather
25 than limits efficiency.

26
27 In the future there is one point that colleges
28 and universities will need to make to the public
29 and its elected representatives very persuasively.
30 This is simply that the goal of efficiency in
higher education can be realized without noneduca-
tional officials intervening in the fiscal affairs
of colleges and universities. (pp. 313, 318)
Two factors in particular add to the efficiency of
a university system which is relatively free to control
its own affairs: long-range planning and administrative
decentralization. There is a clear need for a strong
board of regents to make long-range plans which are
appropriate to the needs of higher education and free

1 from short-term political whims. The limits of centrali-
2 zation in government operations have become apparent;
3 particularly in such an unpredictable and flexible field
4 as higher education, local and regional decision-making
5 has demonstrated a greater efficiency than have ultra-
6 centralized management techniques.

7 A board of regents which is given the power to
8 control and manage its own affairs would enormously
9 improve the planning situation for higher education in
10 Montana. At present duplication and inter-institutional
11 rivalry for funds is the rule. Under the proposed system
12 the board of regents would submit a unified budget to the
13 legislature for action. Competition for funds which now
14 occurs in the legislative halls would be resolved in advance
15 by the board, which would have in mind a broad view of higher
16 education. Similarly, the board would be in a position
17 with knowledge and authority to eliminate wasteful duplica-
18 tion of courses and other endeavors which now drain
19 university funds. Academic and administrative time which
20 is now wasted in a multi-level budgeting process would be
21 spared. Hard decisions concerning direction and operation
22 of the entire university system could be made intelligently
23 and objectively by such a board.

24 With these considerations in mind, the committee has
25 developed the proposal for a board of regents of higher
26 education embodied in Section 11. The proposed board
27 would fulfill the requirements for specialization, freedom,
28 and efficiency described above. The board would have
29 corporate status and would be charged with the function
30 of controlling the academic, financial, and administrative

1 affairs of the Montana university system. These are the
2 characteristics and powers which such a board must
3 necessarily have in order to be effective in carrying out
4 the purposes for which it is designed.

5 In designating the board of regents a body corporate,
6 the committee intends that the board be considered a legal
7 entity which has powers as a board rather than as individ-
8 uals and which is perpetuated as a separate administrative
9 entity. With such status, the board gains a legal status
10 appropriate to its task. One study notes:

11 Many would interpret the granting of corporate
12 status to a university as the highest achieve-
13 ment and fullest recognition of the independence
14 of higher education. It is an acknowledgment
15 of the freedom for objective inquiry necessary
16 for an institution of higher education. [Hawaii,
17 Legislative Reference Bureau, Hawaii Constitutional
18 Convention Studies, Article IX: Education (Higher
19 Education), Vol. 2, Honolulu: 1968, p.8.]

17 As a constitutional corporation, the board of regents
18 would be presumed to exercise managerial control over its
19 own internal affairs. Extensive studies which have been
20 done on the constitutional status of boards of higher edu-
21 cation indicate that the particular determination of powers
22 and responsibilities of a board for a given state depend
23 to a large degree on the particular history and academic
24 structure in that state. (See especially Charles R.
25 Cashmore, Barry L. Hjort, and Ronald R. Ladders, Constitu-
26 tional Authority for Higher Education: A Legal Analysis,
27 Report submitted to the Education and Public Lands Committee,
28 Montana Constitutional Convention, 1971).

29 It is interesting to note that the Montana Constitu-
30 tion of 1884 named the board "The Regents of the University

1 of Montana" and designated it a "body corporate" [Art. IX,
2 Sec. 12]. This language was changed when the concept of
3 the state board was broadened in 1889 to include juris-
4 diction over other state educational institutions, [Art. XI,
5 Sec. 8, Constitution of 1889].

6 Under the existing Section 11, the Montana Supreme
7 Court has declared that, "the board of education is a
8 part of the executive department, and is but an agency of
9 the state government" (State v. Brannon, 86 Mont. 200, 208
10 [1929]). In the same opinion, the court referred to the
11 university as the "development arm" of the state. It is the
12 committee's view that this is not an adequate description
13 of a state board of regents nor of the character or
14 function of a university. The proposed section would es-
15 tablish the board and the university system in roles appropriate
16 to a modern, free system of higher education.

17 The board of regents is also granted supervising and
18 coordinating powers over other institutions of higher edu-
19 cation as may be assigned by law. This distinction between
20 board powers with respect to the university system and other
21 institutions of higher education is of particular importance
22 to community colleges, which are presently controlled by
23 local boards. The language leaves flexibility to the
24 legislature to respond to future developments in higher
25 education. The membership and terms of the board are
26 identical to those of the board of public education; however,
27 in contrast to the lower board, the board of regents is
28 authorized to appoint its own executive officer.

29 *Section 12. STATE UNIVERSITY FUNDS. The funds of the*
30 *state university and of all other state institutions of*

1 *learning, from whatever source accruing, shall forever*
2 *remain inviolate and sacred to the purpose for which they*
3 *were dedicated. The various funds shall be respectively*
4 *invested under such regulations as may be prescribed by*
5 *law, and shall be guaranteed by the state against loss*
6 *or diversion. The interest of said invested funds,*
7 *together with the rents from leased lands or properties*
8 *shall be devoted to the maintenance and perpetuation of*
9 *these respective institutions.*

10 COMMENTS

11 This section remains unchanged from Section 12 of the
12 existing constitution. This provision has worked well in
13 protecting the funds of the university system, and it is
14 in accord with the conditions mandated in the Enabling
15 Act for lands granted the university.

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MINORITY PROPOSAL

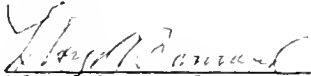
1 BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

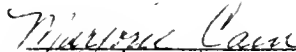
2 That the following section replace Section 3 of the
3 Education and Public Lands Majority Proposal:

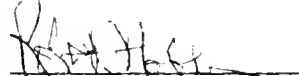
4
5 ARTICLE

6 EDUCATION

7 Section 3. The public school fund shall forever remain
8 inviolate. The public school fund and the funds of the
9 state university and of all other state institutions of learning,
10 from whatever source accruing, shall be safely and conserv-
11 atively invested in public securities with the state, or in
12 bonds of the United States, or in other securities fully
13 guaranteed as to principal and interest by the United States,
14 or in other such safe investments bearing a fixed rate of
15 interest, as may be prescribed by law.

16 
17 Lloyd Barnard


18 Marjorie Cain


19 Robert Noble

COMMENTS ON MINORITY PROPOSAL

ARTICLE _____

EDUCATION

1
2
3 *Section 3. The public school fund shall forever remain*
4 *inviolable. The public school fund and the funds of the*
5 *state university and of all other state institutions of learning,*
6 *from whatever source accruing, shall be safely and conserv-*
7 *atively invested in public securities with the state, or in*
8 *bonds of the United States, or in other securities fully*
9 *guaranteed as to principal and interest by the United States,*
10 *or in other such safe investments bearing a fixed rate of*
11 *interest, as may be prescribed by law.*

COMMENTS

12
13 A minority of the committee feels that, although
14 unnecessary restrictions should be removed from the invest-
15 ment of state funds, nevertheless, security must be the
16 predominant factor in the investment of school funds. To
17 eliminate all restrictions except those adopted by statute
18 would be to allow the school funds to come into possible
19 jeopardy, in the case of, for instance, if the investment
20 board were to emphasize the principle of growth over that of
21 security. Due to the reliance of local districts upon an
22 insured source of yearly funding, the minority feels that the
23 greatest precautions must be taken in securing those public
24 funds which are devoted to the support of education.

25 The minority, therefore, proposes that specific restrict-
26 ions to guarantee the secure investment of school funds be
27 included under Section 3 of the proposed new article. This
28 intention also requires a modification of the proposed article
29 on investments. The addition of the phrase "not otherwise
30 constitutionally restricted" allows the requirements specified

1 in the minority's proposed Section 3 of the new Education
2 article to be fulfilled.

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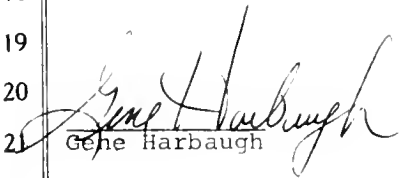
MINORITY PROPOSAL

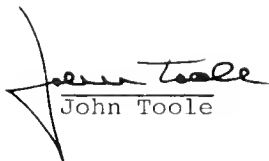
1 BE IT PROPOSED:

2 That the following be substituted for Section 6 of
3 the Majority Proposal of the Education and Public Lands
4 Committee.

5 *Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS.*
6 *Neither the legislative assembly, nor any county, city,*
7 *town, or school district, or other public corporations,*
8 *shall ever make directly any appropriation, or pay from*
9 *any public fund or monies whatever, or make any grant of*
10 *lands or other property in aid of any church, or for any*
11 *sectarian purpose, or to aid in the support of any school,*
12 *academy, seminary, college, university, or other literary,*
13 *scientific institution, controlled in whole or in part by*
14 *any church, sect or denomination whatever. This section shall*
15 *not apply to funds from federal sources provided to the*
16 *state for the express purpose of distribution to non-public*
17 *education.*

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Gene Harbaugh


John Toole


Dan Harrington

1 Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS.
2 Neither the legislative assembly, nor any county, city,
3 town, or school district, or other public corporations,
4 shall ever make directly any appropriation, or pay from
5 any public fund or monies whatever, or make any grant of
6 lands or other property in aid of any church, or for any
7 sectarian purpose, or to aid in the support of any school,
8 academy, seminary, college, university, or other literary,
9 scientific institution, controlled in whole or in part by
10 any church, sect or denomination whatever. This section
11 shall not apply to funds from federal sources provided to
12 the state for the express purpose of distribution to non-
13 public education.

14 COMMENTS

15 A minority of the committee proposes that the Section
16 8 of the present constitution be modified by deleting the
17 words "or indirectly" from the first sentence and that a new
18 sentence be added at the end of the section to read as
19 follows: "This section shall not apply to funds from federal
20 sources provided to the state for the express purpose of
21 distribution to nonpublic education."

22 The minority subscribes to the position expressed in
23 the body of the majority proposal in which equality of edu-
24 cational opportunity for all is stated as a primary goal.
25 It is the conviction of the minority that this goal amounts
26 to a hollow promise, unless some provision is made in our
27 constitution which will protect the rights of that sector of
28 our society which is engaged in nonpublic education. There
29 are presently 11,645 elementary and secondary students, or
30 6.3% of the total elementary and secondary students of the

1 state enrolled in nonpublic schools. A total of 2,775
2 students, or 10% of the total higher education students of
3 the state, are enrolled in nonpublic institutions of
4 higher learning.

5 It is common knowledge that many nonpublic institutions
6 are facing extreme difficulties in financing their institu-
7 tions. Nationally, in 1950 over 50 percent of university
8 and college students were enrolled in nonpublic institutions.
9 In 1969 this figure had dropped to 28 percent. Many non-
10 public elementary and secondary school are also being forced
11 to close.

12 Due to school closures, since 1964-65 the number of
13 students enrolled in nonpublic elementary and secondary
14 schools in Montana has dropped from 19,878 to 10,579, a
15 cut in enrollment of almost half. In the same period 22
16 of the previous total of 64 nonpublic schools were forced
17 to close their doors. (See Appendix G).

18 In an age when the state exercises vast economic powers
19 and when inflationary pressures are rising, the hopes for
20 the survival of any nonpublic educational institutions
21 become increasingly dim.

22 The result is not only a denial of educational oppor-
23 tunity and diversity, but also a significantly greater drain
24 on public revenue than would be the case if the schools were
25 allowed to survive through the types of aids permitted under
26 the federal First Amendment. An example of the increased
27 costs to taxpayers resulting from the closing of nonpublic
28 schools is that of the recent closing of parochial schools
29 (334 high school students; 160 junior high students; 336
30 elementary students) in Helena. The additional costs which

1 resulted in Helena from the displacement of students from
2 nonpublic to public schools without any increase in tax
3 base has been estimated to be approximately \$1,767,600 over
4 the past three-year period (based on bond issue, permissive
5 levy, voted amount, and deficiency). This does not include
6 the additional cost to the state foundation program for the
7 support of the additional students. In the state as a whole
8 the estimated savings to state taxpayers resulting from
9 students educated in nonpublic elementary and secondary
10 schools is approximately \$6,000,000 per year. A table
11 showing the state-wide savings to taxpayers is included in
12 Appendix H.

13 In a time when the nation's courts are insisting on
14 education as a fundamental and basic right, and that equality
15 of educational opportunity be measured by a corresponding
16 equality of financial expenditure, it is incongruous to retain
17 a constitutional statement that might deprive a significant
18 segment of our students of any aid available which might
19 help to equalize their educational opportunity.

20 Education is by its very nature a public purpose. This
21 is the reason why the state involves itself so fully in
22 accrediting and setting standards for both public and non-
23 public schools. The ability of a student to receive a
24 secular education should not be hampered by his religious
25 or other beliefs. Incidental aid which might accrue to
26 religiously connected institutions should not preclude the
27 major benefit to the child of the receipt of an education,
28 any more than religiously affiliated hospitals should be
29 denied public assistance because of possible indirect aid to
30 a church.

1 Section 8 of the existing constitution is among the
2 most restrictive, if not the most restrictive, such con-
3 stitutional provision in the nation. In addition to a
4 complete ban listing all possible sources of public aid to
5 sectarian schools or for sectarian purposes (which is
6 identical to the most stringently worded provisions in
7 several other states), the Montana provision adds the words
8 "directly or indirectly." This precludes even the kind of
9 student benefit aid which has been accepted by the federal
10 Supreme Court.

11 It is the belief of the minority that the language
12 contained in Section 8 of the present constitution is
13 unnecessarily stringent and poses a serious threat to the
14 educational rights of students attending nonpublic educa-
15 tional institutions. The financing of education in America
16 in the future is in a state of flux, but there is every
17 indication that the federal government will become increas-
18 ingly involved. A recent study by the National Educational
19 Finance Project concludes:

20 Whatever federal grants are made in the days ahead,
21 they should not by-pass state governments; instead,
22 federal grants for public schools should be made to
23 the state educational agency for allocation to local
24 schools in accordance with state plans. (National
25 Educational Finance Project, Future Directions for
26 School Financing, Gainesville, Florida: 1971, p. 35.)

27 Should revenue sharing, block grants, and other forms
28 of federal financing, yet to be devised, fall within the
29 jurisdiction of state control, nonpublic educational
30 institutions might be seriously affected if such funds

1 had to be restricted in accordance with the regulations
2 of the present Section 8.

3 In reply to those who are fearful of changing the
4 present system lest state aid to parochial institutions
5 violate the principle of separation of church and state,
6 the minority wishes to point out that the First Amendment
7 of the federal Constitution guarantees the enforcement of
8 that principle. The First Amendment has a back-log of
9 almost 200 years of legal interpretation. That inter-
10 pretation has evolved through the years to a rather clear
11 definition of the types of aid which are permissible and
12 those which are not. The primary concerns expressed by
13 the Court in its most recent cases on the subject are on
14 the principles of non-entanglement and state neutrality.
15 In Lemon v. Kurtzman (403 U.S. 602) the Chief Justice
16 Burger gave the opinion of the Court which stated:

17 Our prior holdings do not call for total
18 separation between church and state; total
19 separation is not possible in an absolute
20 sense Judicial caveats against entangle-
21 ment must recognize that the line of separation,
22 far from being a "wall," is a blurred, indistinct
23 and variable barrier depending on all the cir-
24 cumstances of a particular relationship

25 In order to determine whether the govern-
26 ment entanglement with religion is excessive,
27 we must examine the character and purposes of the
28 institutions which are benefited, the nature of the
29 aid that the State provides, and the resulting
30 relationship between the government and the religious

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authority. (Id. at 756-757)

In this case the Court ruled that state subsidized salaries for teachers of secular subjects in parochial schools violated this principle of non-entanglement and therefore was not acceptable as a form of aid.

The minority proposal is in accord with the principles set forth in the First Amendment. What is at stake in the minority proposal is not separation of church and state, which is an issue of basic rights already delineated by the federal Constitution and federal courts, but rather the issue of encouraging equality of educational opportunity.

Finally, the minority wishes to take the position that the language of the existing Section 8 is rigid and inflexible, and is not in keeping with changing legal interpretations nor fluxuating social patterns. In order to protect our heritage of pluralism and foster the principle of equal educational opportunity, the minority report urges adoption of its proposal.

MAJORITY PROPOSAL

1 BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

2 That there be a new Article on Public Lands to read
3 as follows:

4
5 ARTICLE _____

6 PUBLIC LANDS

7 Section 1. PUBLIC LAND TRUST, DISPOSITION. All lands
8 of the state that have been or that may hereafter be granted
9 to the state by congress, and all lands acquired by gift or
10 grant or devise, from any person or corporation, shall be
11 public lands of the state, and shall be held in trust for
12 the people, to be disposed of as hereafter provided, for
13 the respective purposes for which they have been or may be
14 granted, donated or devised; and none of such land, nor any
15 estate or interest therein, shall ever be disposed of except
16 in pursuance of general laws providing for such disposition,
17 nor unless the full market value of the estate or interest
18 disposed of, to be ascertained in such manner as may be
19 provided by law, be paid or safely secured to the state;
20 nor shall any lands which the state holds by grant from the
21 United States (in any case in which the manner of disposal
22 and minimum price are so prescribed) be disposed, of except
23 in the manner and for at least the price prescribed in the
24 grant thereof, without the consent of the United States.
25 Said lands shall be classified by the board of land
26 commissioners in a manner prescribed by law. Any of said
27 lands may be exchanged for other lands, public or private,
28 which are equal in value and as closely as possible equal
29 in area.
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Richard Champoux
Richard Champoux, Chairman

Robert Noble
Robert Noble, Vice Chairman

Lloyd Barnard
Lloyd Barnard

William Burkhardt
William Burkhardt

Marjorie Cain
Marjorie Cain

Max Conover
Max Conover

Carl M. Davis
Carl Davis

Gene Harbaugh
Gene Harbaugh

Dan Harrington
Dan Harrington

Robert F. Woodmansey
Robert Woodmansey

John Toole
John Toole

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COMMENTS ON MAJORITY PROPOSAL

Section 1. PUBLIC LAND TRUST, DISPOSITION. All lands of the state that have been or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed, of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the board of land commissioners in a manner prescribed by law. Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area.

COMMENTS

In testimony on the issue of public lands, officials of the State Land Board described public lands as trust lands held by the state and stated that the income derived from these lands is credited to the state school fund or other respective purpose for which said land was

1 granted. Sportsmen maintained that there is a lack of public
2 access to public lands. The committee also heard from
3 several witnesses on existing and proposed management practices
4 on public lands.

5 The committee took into account the mandate of the En-
6 abling Act of 1889 in drafting its proposal. It is the
7 general view of the committee that the primary constitutional
8 issue with regard to state lands is the designation of state
9 responsibility for public lands as held in trust by the state
10 to be disposed of as provided in the terms of the grant.

11 Admittedly, some dispute as to the mandate of the Enabling
12 Act has and will, in all probability, be raised. The
13 "general public benefit" notion articulated in Thompson v.
14 Babcock (147 Mont. 46) requires continual interpretation and
15 specification. The question of just what is the "largest
16 measure of legitimate and reasonable advantage to the state"
17 remains open to further determination. The committee em-
18 phasizes the singular mandate in the Enabling Act that the
19 lands granted in Section 10 were "for the support of common
20 schools." The proposal embodies a fundamental protection
21 of these lands entrusted to the state so that their dis-
22 position will be in accordance with the greatest public
23 benefit, commensurate with the purposes for which the lands
24 were granted.

25 This proposal expresses the committee's view of the
26 best constitutional method of serving public interest,
27 granting powers, and providing for needed flexibility. Con-
28 vinced of the need for sound and efficient management of
29 state school lands, the committee delegated this responsi-
30 bility in another section of the constitution to the board

1 of land commissioners. The merits for such action are
2 (1) success of present system and (2) need for flexibility.
3 The economic success of the present system of land manage-
4 ment is borne out by the fact that the state had as of
5 June 30, 1970, \$52,907,243 dollars in its permanent school
6 fund, with almost \$3,000,000 dollars coming in on deferred
7 payments every year. Montana remains one of two or three
8 states in the nation which has been wise enough to retain
9 almost the entirety of its federally granted school lands
10 and which, as a result, now reaps a substantial income from
11 such lands for schools.

12 The committee decided to delete the constitutional
13 specification of land classes. House Joint Resolution #32
14 (Laws of Montana, 42nd Session, 1971, Vol. 11, p. 1709)
15 expressed the sense of the legislature in the form of a
16 recommendation to the Constitutional Convention that the
17 Board of Land Commissioners be given the authority to grant
18 multiple use classifications and the power to change these
19 classifications as the Board deemed necessary. The committee
20 agrees with the intent of this resolution to provide flexi-
21 bility in management of public lands. No arguments were
22 presented to the committee in opposition to such a change.
23 The committee can foresee only benefits in the elimination
24 of rigid constitutional classifications.

25 The other area of change in the article was the inclu-
26 sion of the sentence, "Any of said lands may be exchanged for
27 other lands, public or private, which are equal in value and
28 as closely as possible equal in area." Due to the fact that
29 the Enabling Act was amended in 1932 to provide for such an
30 exchange of lands, the committee proposes a constitution

1 that contains a provision consistent to the amended Enabling
2 Act. Several witnesses pointed out the advantages which
3 would accrue to the state from the ability to make judicious
4 exchanges to consolidate state holdings.

5 The committee also eliminated Sections 2 and 3 of the
6 existing constitution, Article XVII, on the grounds that
7 they have been made obsolete by the proposed new language.

8 In summary, the committee has retained almost the
9 entire first section of the Public Lands Article (Article XVII)
10 of the present constitution, with the inclusion of "exchange"
11 of state lands to add an important managerial power. The
12 committee chose to eliminate constitutional classifications
13 for state lands due to the need for flexibility. Sections 2
14 and 3 were eliminated because they are obsolete or are
15 matters of purely legislative concern.

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MAJORITY PROPOSAL

1 BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

2 That there be a new Article on Investments to read
3 as follows:

4
5 ARTICLE _____

6 INVESTMENTS

7 Section 1. UNIFIED INVESTMENT PROGRAM. The legis-
8 lative assembly shall provide for a unified investment
9 program for all public funds. The state may invest surplus
10 funds of any political subdivision of the state when re-
11 quested to do so by the governing board of that political
12 subdivision. The legislative assembly shall designate a
13 state officer or agency to accept or reject contributions
14 to the state. The state shall keep a permanent record of
15 all contributions to the state, and shall periodically
16 make provision for commemoration of those benefactors.
17 The legislative assembly shall establish regulations and
18 limitations for the investment of public funds. An
19 audit of the state investment program shall be conducted
20 annually.

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Richard Champoux
Richard Champoux, Chairman

Robert Noble
Robert Noble, Vice Chairman

Lloyd Barnard
Lloyd Barnard

William Burkhardt
William Burkhardt

Marjorie Cain
Marjorie Cain

Max Conover
Max Conover

Carl Davis
Carl Davis

Gene Harbaugh
Gene Harbaugh

Dan Harrington
Dan Harrington

Robert F. Woodmansey
Robert Woodmansey

John Toole

1 COMMENTS ON MAJORITY PROPOSAL

2 Section 1. UNIFIED INVESTMENT PROGRAM. The
3 legislative assembly shall provide for a unified
4 investment program for all public funds. The state
5 may invest surplus funds of any political subdivision
6 of the state when requested to do so by the governing
7 board of that political subdivision. The legislative
8 assembly shall designate a state officer or agency to
9 accept or reject contributions to the state. The state
10 shall keep a permanent record of all contributions to
11 the state, and shall periodically make provision for
12 commemoration of those benefactors. The legislative
13 assembly shall establish regulations and limitations
14 for the investment of public funds. An audit of the
15 state investment program shall be conducted annually.

16 COMMENTS

17 The relevant article of the existing constitution
18 (Article XXI) was jointly assigned to the Revenue and
19 Finance Committee and the Education and Public Lands
20 Committee. After due consideration of the provision in
21 conjunction with the Revenue and Finance Committee, a
22 majority of the Education and Public Lands Committee has
23 decided to adopt replacement language similar to that
24 proposed by the former committee.

25 The Education and Public Lands Committee is concerned
26 with the security and protection of the public funds of the
27 state, but recognizes the obsolete character of most of the
28 existing article on the Trust and Legacy Fund. Due to the
29 confused history of the fund and the statutory nature of
30 most aspects of its investment, the committee feels that

1 only a broad statement of investment policy is necessary.
2 A unified state investment program is the most rational
3 way to administer such funds, and it is a method which
4 promises to increase the income from such monies over what
5 has been realized in the past.

6 This proposed section differs from the majority
7 proposal of the Revenue and Finance Committee in two major
8 respects. First, the committee feels that it is important
9 to allow investment of the funds of localities only at
10 their own request. Secondly, due to the particular char-
11 acter of gifts and grants made to the educational system,
12 the committee agrees that it is important to maintain
13 records of such gifts and to commemorate the benefactors.
14 Otherwise the majority of the Education and Public Lands
15 Committee is in agreement with the proposed language and
16 rationale of the majority of the Revenue and Finance
17 Committee on this provision.

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MINORITY PROPOSAL

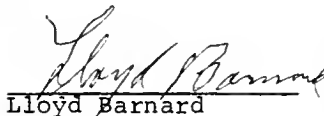
1 BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

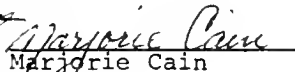
2 That the following sentence replace the first sentence
3 of the Education and Public Lands Majority Proposal:

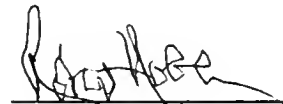
4
5 ARTICLE _____

6 INVESTMENTS

7 The legislative assembly shall provide for a unified
8 investment program for all public funds not otherwise
9 constitutionally restricted.

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12 Lloyd Barnard


13 Marjorie Cain


14 Robert Noble

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COMMENTS ON MINORITY PROPOSAL

ARTICLE _____

INVESTMENTS

The legislative assembly shall provide for a unified investment program for all public funds not otherwise constitutionally restricted.

COMMENTS

A minority of the committee feels that, although unnecessary restrictions should be removed from the investment of state funds, nevertheless, security must be the predominant factor in the investment of school funds. To eliminate all restrictions except those adopted by statute would be to allow the school funds to come into possible jeopardy, in the case of, for instance, if the investment board were to emphasize the principle of growth over that of security. Due to the reliance of local districts upon an insured source of yearly funding, the minority feels that the greatest precautions must be taken in securing those public funds which are devoted to the support of education. The addition of the phrase "not otherwise constitutionally restricted" in the proposed Investments article allows the requirements specified in the minority's proposed Section 3 of the new Education article to be fulfilled.

APPENDIX A

CROSS REFERENCES

Education Article
Proposed Section

Present Article and Section

1	XI, 1, 6, 7
2	XI, 2
3	XI, 3
4	XI, 4
5	XI, 5
6	XI, 8
7	XI, 9
8	XI, 10
9	XI, 11
10	XI, 11
11	XI, 11
12	XI, 12

Public Lands Article

1	XVII, 1, 2, 3
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Investments Article

1	XXI, (entire article)
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APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Education and Public Lands Committee during its deliberations:

	<u>Number of Proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition</u>
1.	11	Virginia Blend	Full State Funding	Intent included in part, Section 1
2.	29	Marian Erdmann	School Election	Intent incorporated Section 8
3.	41	John Leuthold	Public Aid	Intent incorporated in part, Sec. 6
4.	43	R. Champoux	Equal Educational Opp.	Incorporated in Section 6
5.	46	Mike MeKeon	Public School Financing	Intent Incorporated
6.	49	C. Blaylock	Apportionment of School Funds	Incorporated in Section 8
7.	68	Carl Davis	Investment of School Funds	Incorporated in part in Sec. 1,3,5
8.	74	Max Conover	Investment of Public School Fund	Adopted with slight changes as Sec. 3
9.	85	G. Rollins	Body Corporate	Incorporated in part Section 11
10.	91	Marjorie Cain	Equal Educational Opportunity	Incorporated in part Section 1
11.	102	R. Kelleher	Financial Suppt. Private College	Rejected

12.	113	R. Roeder	Teachers' Salary Equity Board	Rejected
13.	128	M.N. Robinson	Appoint Board of Education	Rejected
14.	130	M.N. Robinson	Public Libraries	Incorporated in part in Section 1
15.	135	Carl Davis	Exchange of Public Lands	Adopted with slight changes as Public Lands Article
16.	142	John Toole	Two Boards	Incorporated in part in Section 11
17.	143	John Toole	Combine Sections 1 and 6	Intent incorporated in Section 1
18.	146	D. Bugbee	Board of Regents	Intent incorporated in part in Sec. 11
19.	164	G. Harbaugh	Section 8	Rejected in majority report. Adopted in minority report
20.	171	W. Burkhardt	Board of Regents body corporate	Intent adopted in Section 11
21.	175	G. Harbaugh	School Lands	Intent incorporated in part in Public Lands Article

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. N. D. Ostrander - Seventh Day Adventist Churches - Helena
Public Aid to Non-Public Schools.
2. Dr. E. L. Lynn - citizen - Helena - Public Aid to Non-
Public Schools.
3. Chadwick Smith - Montana School Boards Assoc. - Helena -
Two Boards of Education
4. Don Scanlin - Educator - Billings - Educational Philosophy
5. C. R. Anderson - citizen - Dillon - Education in General
6. Bill Cainan - Masons of Montana - Helena - Public Aid to
Non-Public Schools.
7. Gladys Vance - PTA - Great Falls - General Education
8. Lloyd Markell - Montana Education Assoc. - Helena -
Article XI.
9. Harriet Meloy - Member of the State Board - Helena -
Two Boards of Education.
10. Harry Axtmann - Supt. of Schools, Roosevelt County -
Wolf Point - County Superintendents.
11. Clarice Beck - American Assoc. of University Women -
Helena - Age Limit.
12. Robert Herrig - Supt. of Schools, Lincoln County - Libby -
County Superintendents.
13. Margaret Brown - Supt. of Schools, Gallatin County - Bozeman -
County Superintendents.
14. Ted Schwinden - State Land Commissioner - Helena - State
Lands and public access.

15. Fred Johnson - citizen - Great Falls - Public Lands.
16. Dolores Colburg - State Supt. of Public Instruction - Helena - All aspects of Education.
17. Maurice Hickey - Montana Education Association - Helena - Public Lands.
18. Fletcher Newby - Environmental Council - Helena - Public Lands.
19. Steven Coldiron - State Low-Income Organization - Helena - Article XI, Sections 5 and 7.
20. Robert Pantzer - President, University of Montana - Missoula - Two Boards.
21. Kenneth Rohyans - Mont. Assoc. for Retarded Children & Adults - Helena - Age Limit.
22. Dr. William Furdell - College of Great Falls - Great Falls - Public Aid to Non-Public Schools.
23. John Sheehy - Montana Catholic Conference - Billings - Public Aid to Non-Public Schools.
24. Lyle Conner - Masons of Montana - Helena - Public Aid to Non-Public Schools.
25. John Eldredge - citizen - Helena - Public Aid to Non-Public Schools.
26. Jack Holt - citizen - Helena - Public Aid to Non-Public Schools.
27. John S. Piatt - Americans United - Great Falls - Public Aid to Non-Public Schools.
28. Ernest Neath - Masons of Montana - Helena - Public Aid to Non-Public Schools.
29. Leo Kottas - Masons of Montana - Helena - Public Aid to Non-Public Schools.
30. George Schotte - Carroll College - Helena - Public Aid to Non-Public Schools.
31. Rev. John Moes - Christian Reform Church - Conrad - Public Aid to Non-Public Schools.
32. Forrest Anderson - Governor - Helena - State Board of Education.
33. Robert Watt - Montana Student President's Assoc. - Helena - State Board.

34. Harry Gaghen - Faculty Senate, EMC - Billings - Two Boards.
35. Polly Prechal - Faculty Senate, EMC - Billings - State Board.
36. James Short, President, WMC - Dillon - Two Boards.
37. Carl McIntosh - President, MSU - Bozeman - Two Boards.
38. James Kenny - Montana School Boards Assoc. - Helena - State Board of Education - One Board.
39. Dr. Larry Blake - Flathead Valley Community College - Kalispell - # of Boards.
40. Vern Kailes - Miles City Community College - Miles City - # of Boards.
41. Jim Hoffman - Dawson County Community College - Glendive - Description of Board's powers.
42. Arthur Hart - Vocational Rehabilitation - Helena - Vocational-Rehab in Constitution.
43. Jack Gunderson - State Representative - Power - State Supt.
44. Leroy Corbin - Montana Federation of Teachers - Butte - State Superintendent.
45. Rosemary Boschert - citizen - Billings - State Superintendent.
46. Erv. Gysler - Delegate - Fort Benton - Vo Tech
47. Maurice Driscoll - Director, Vo-Tech - Butte - Vo-Tech.
48. William Korizek - Director, Vo-Tech - Helena - Vo-Tech.
49. Jim Carey - Director - Great Falls Vo-Tech Center - Vo-Tech.
50. Gene Downey - Director - Missoula Vo-Tech Center - Vo-Tech.
51. Ray Heley - Director - Billings Vo-Tech Center - Vo-Tech.
52. Gordon Simmons - Missoula County High School - Missoula - Local Control of Vo-Tech Centers.
53. John Giese - Missoula County High School - Missoula - Vo-Tech.
54. Einar Brosten - Montana Vocational Educators Assoc - Helena - Vo-Tech Centers.
55. Grace Hanson - County Supt., Flathead - Kalispell - County Superintendents.

56. Opal Eggert - Lobbyist for Co. Supt. - Helena - County Superintendents.
57. Dorothy Simons - Lewis & Clark Co. Supt. - Helena - County Superintendents.
58. Carolyn Frojen - Missoula Co. Supt. - Missoula - County Superintendents.
59. Earl Barlow - Office of Public Instruction - Helena - Indian Education.
60. Bert Corcoran - Rocky Boy Supt. - Box Elder - Equal Education for Indians.
61. Frances Satterthwaite - Inter-Tribal Policy Board lobbyist - Helena - Indian Education.
62. Frank Shone - School District #1 - Helena - Indian Education.
63. Dwight Billedeaux - Eastern Montana College - Billings - Indian Education.
64. Robert Jovick - Montana Student President's Assoc. - Bozeman - Students Concern in Education.
65. Frank Dudas - Associated Students - MSU - Bozeman - Students Concern in Education.
66. Wayne Gildroy - Montana Student President's Assoc. - Students Concern.
67. John Christensen - Associated Students - U of M - Missoula - Students Concern.
68. Stan Juneau - Indian Club, EMC - Billings - Indian Education.
69. Calvin Herrera - Indian Club, EMC - Billings - Indian Education.
70. Clara Lee McMakin - Indian Club, EMC - Billings - Indian Education.
71. Dale Kindness - Indian Club, EMC - Billings - Indian Education.
72. Rayola Adele Eder - EMC - Billings - Indian Education.
73. Frank LaMere - EMC - Billings - Indian Education.
74. Leroy Berven - U of M - Missoula - Students Concern.
75. John Murphy - Student - Missoula - Students Concern.
76. Tom Daily - Student - Missoula - Students Concern.
77. Patricia Denny - Student - Missoula - Students Concern.

78. Ulyssis Doss - Professor, U of M - Missoula - Equal Educational Opportunity.
79. Harold Gray - University of Montana - Missoula - Equal Educational Opportunity.
80. Jim Graham - citizen - Miles City - Equal Educational Opportunity.
81. John Mansfield - citizen - Great Falls - Equal Educational Opportunity.
82. James Shea - citizen - Great Falls - Equal Educational Opportunity.
83. Barnie Old Coyote - Montana State University - Bozeman - Equal Educational Opportunity.
84. D. D. Cooper - Montana Education Association - Helena - Equal Educational Opportunity.
85. James Howeth - Board of Investments - Helena - Trust and Legacy Fund.
86. Marjorie King - Member State Board - Winnett - State Board of Education.
87. Fred Mielke - Member State Board - Havre - State Board of Education.
88. John French - Member of State Board - Ronan - State Board of Education.
89. Raymond Hoakanson - Montana Assoc. of School Administrators - Livingston - Financing.
90. John Campbell - Montana School Boards Assoc. - Helena - Educational Financing.
91. Mike Billings - Office of Public Instruction - Helena - Financing.
92. Mike Meloy - Office of Public Instruction - Helena - Foundation Program - Financing.
93. John Ray - citizen - Hamilton - Financing.
94. James Cox - U of M, School of Education - Public Aid to Non-Public Schools.
95. Earle Thompson - State Library Commission - Missoula - Libraries.
96. Doris Davies - American Assoc. of University Women - Libraries.
97. Robert Gopher - citizen - Great Falls - Indian Education.

98. George Darrow - State Representative - Billings - Section 1.
99. Dr. Bill Fisher - U of M, School of Education - Public Aid to Non-Public Schools.
100. Ray Gulick - citizen - Joplin - Education in general.

ROLL CALLS ON EDUCATION PROPOSAL

MEMBER	SECTION	SECTION												TOTAL		
		1	2	3	4	5	6	7	8	9	10	11	12	Y	N	A
CHAMPOUX, Richard		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
NOBLE, Robert		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
BARNARD, Lloyd		Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	9	2	
BURKHARDT, William		Y	Y	Y	Y	Y	Y	Ab.	Ab.	Y	Y	Y	Y	10		2
CAIN, Marjorie		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
CONOVER, Max		Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	11	1	0
DAVIS, Carl		N	Y	Y	Y	Y	Y	Y	Ab.	Y	Y	Y	Y	10	1	0
HARBAUGH, Gene		Y	Y	Y	Y	Y	N	N	Y	N	Y	Y	Y	9	3	0
HARRINGTON, Dan		Y	Y	Y	Y	Y	N	N	Y	N	Y	Y	Y	9	3	0
WOODSMANSEY, Robert		Y	Y	Y	Ab.	Y	Y	Y	Y	N	N	Y	Y	9	2	1
TOOLE, John		Ab.	Ab.	Ab.	Ab.	Y	N	Ab.	Ab.	Ab.	Y	Ab.	Ab.	2	1	9
TOTAL	Yea	9	10	10	9	11	8	7	7	7	7	8	10			
	May	1					3	2		3	3	3				
	Absent	1	1	1	2			2	3	1		1	1			

ROLL CALLS ON

PROPOSAL

MEMBER	SECTION	Public Lands			Investments					TOTAL			
		Y	N	A	Y	N	A	Y	N	A			
CHAMPOUX, Richard		Y			Y						2	0	0
NOBLE, Robert		Y			Y						2	0	0
BARNARD, Lloyd		Y			N						1	1	0
BURKHARDT, William		Ab.			Ab.						0	0	2
CAIN, Marjorie		Y			Y						2	0	0
CONOVER, Max		Y			Y						2	0	0
DAVIS, Carl		Ab.			Ab.						0	0	2
HARBAUGH, Gene		Y			Y						2	0	0
HARRINGTON, Dan		Y			Y						2	0	0
WOODMANSEY, Robert		Y			Y						2	0	0
TOOLE, John		Ab.			Ab.						0	0	2
TOTAL		Yea			10						9		
		Nay			1						1		
		Absent			1						1		

APPENDIX E

STATE OF MONTANA

OFFICE OF THE STATE SUPERINTENDENT

HELENA, MONTANA



DOLORES COLBURG
Superintendent of
Public Instruction

February 10, 1972

To: Richard Champoux, Chairman, Education Committee

From: Mike Billings, Director, Financial Support for Schools *Mike Billings*

Subject: Request for a fiscal note concerning proposed new wording of Article XI, Section 5.

If the wording in Article XI, Section 5 is changed in such a way that the I & I money is distributed to the elementary and secondary schools of the state (in place of to the public schools according to the 6-20 age census), no cost increase will be realized in administering the distribution of the funds. In fact, a substantial cost reduction would be realized, provided that the legislature includes the I and I money in the state equalization aid account. This act would eliminate the current costly annual practice of distributing the I and I money in March. This practice presently causes the school districts to spend a cumulative total of about \$50,000 annually to collect the census, and causes the Office of the Superintendent of Public Instruction to expend about \$3,000-\$5,000 to process the census.

Thus, if the wording of Article XI, Section 5 is changed as indicated, an annual savings of approximately \$53,000-\$55,000 could very well be realized by the education establishment in Montana. Under no conditions would the proposed section lead to increased cost of administration at the state or local levels.

MGB:kh

FUNDS GRANTED TO MONTANA NONPUBLIC EDUCATIONAL
INSTITUTIONS UNDER SELECTED FEDERAL PROGRAMS

1. ESEA Title 1: Programs for educationally deprived children.
Federal Guidelines: Educationally deprived children in nonpublic schools may participate, although no funds can be paid directly to a nonpublic school.

Total amount paid to Montana public schools: \$3,317,276

" " " " " nonpublic " : 0

(However, 6% of participating children were nonpublic school children in FY 1970)

2. ESEA Title 2: Textbooks supplied on permanent loan basis.
Federal Guidelines: Nonpublic schools eligible to order books from a list supplied by Superintendent of Public Instruction.

Total amount allotted to Montana public schools: \$155,462

" " " " " nonpublic " : 5,775 (5.5%)

3. ESEA Title 3: Supplementary educational centers and services, including counseling, remedial instruction, experimental educational programs, etc.
Federal Guidelines: No funds can be granted directly to nonpublic schools, but nonpublic school children can participate in projects administered by public schools.

Total amount allotted to Montana public schools: \$532,198

No estimate provided of nonpublic children participating;
no funds allotted to nonpublic schools.

4. ESEA Title 6: Special education training for teachers and students.
Federal Guidelines: Nonpublic school teachers eligible for training funds and nonpublic school children eligible to participate in programs run by public schools.

Total amount allotted to Montana public schools: \$262,279.

No estimate made of nonpublic school children participating;
no funds allotted to nonpublic schools.

5. NDEA Title 3: Federal aid to higher education, the arts, etc.
Federal Guidelines: Nonpublic schools not allowed to participate in part of program administered by the Superintendent of Public Instruction, but nonpublic schools can make direct application to U.S. Office of Education.

Total amount allotted to Montana public schools: \$207,298.

None allotted to Montana nonpublic schools through the Superintendent's Office. Unknown amount granted directly to nonpublic schools.

6. MDTA Title 2: Manpower development and vocational training.
Federal Guidelines: Act provides that training may be done in nonpublic schools if they offer comparable quality and competitive costs, if the training is not available in public institutions, or if there is a long waiting period for entrance to public schools.

Total amount allotted to Montana public schools: \$1,359,000
" " " " " nonpublic " : 114,918 (9.5%)

7. HEFA Title 1: Building grants to institutions of higher education.
Federal Guidelines: Funds may be granted for construction purposes to nonpublic institutions.

Total amount allotted to Montana public institutions: \$6,341,001
" " " " " nonpublic " : 1,009,246
(13.7%)

Total amount allotted to Montana public schools in all of the above programs: \$5,833,513

Total amount allotted to Montana nonpublic schools in all of the above programs: \$ 120,693

(2%)

(plus an undetermined number of nonpublic school children who participate in public school-sponsored programs.)

Total amount allotted to Montana public institutions of higher education in the above program: \$6,341,001

Total amount allotted to Montana nonpublic institutions of higher education under the above program: \$1,009,246

(13.7%)

(\$ in thousands)

CARROLL COLLEGE

	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Higher Education Facilities Act, Title I (Grants for construction to undergraduate institutes)		\$129,620	\$ 15,079		\$405,557		
Higher Education Facilities Act, Title III (Loans for construction to undergraduate institutes)			480,000		492,000		
Cuban Loans			8,865	\$ 5,200	1,750	\$ 500	\$ 500
Educational Opportunity Grants				34,680	59,300	91,760	108,814
National Defense Student Loan	\$ 76,006	73,800	122,085	169,303	163,315	165,339	145,595
College Work-Study Program			24,944	103,383	197,479	274,275	277,582
Higher Education Act, Title I (Community Service and Continuing Education)				75			500,000

(\$ in thousands)

	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
<u>COLLEGE OF GREAT FALLS</u>							
Higher Education Act, Title VI-A (Special Equipment)				\$ 1,224	\$ 3,464	\$ 3,731	
Higher Education Act, Title III (Developing Institutions)				54,908			
Educational Opportunity Grants				19,170	38,300	59,000	\$ 45,121
National Defense Student Loan	\$ 38,624	\$ 36,000	\$ 74,822	86,619	62,282	80,881	65,409
College Work-Study Program			11,908	56,079	48,851	74,772	115,267
Higher Education Act, Title I				16,938			
<u>ROCKY MOUNTAIN COLLEGE</u>							
Higher Education Facilities Act, Title I (Grants)				463,719			
Higher Education Facilities Act, Title III, (Loans)				593,000			
Higher Education Act, Title VI-A				1,945			
Educational Opportunity Grants				18,160	35,800	45,560	39,504

	<u>(\$ in thousands)</u>						
	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
<u>ROCKY MOUNTAIN</u> <u>COLLEGE (Con't E.)</u>							
College Work- Study Program			\$ 5,540	\$ 14,585	\$ 26,786	\$ 63,683	\$ 52,534
Higher Education Act, Title I					13,863		1,367
National Defense Student Loan	\$ 40,000	\$ 45,250	63,900	76,794	56,770	51,137	43,326

APPENDIX G
NON-PUBLIC SCHOOL ENROLLMENT
BY GRADE

YEAR	TOTAL K-8	TOTAL 9-12	Spec. Ed.	State Total
1964-65	-----	-----	--	19,878
1967-68	12,776	4,108	43	16,884
1968-69	11,306	3,788	30	15,094
1969-70	8,616	3,340	--	11,956
1970-71	8,204	3,205	13	11,409
1971-72	7,439	3,140	--	10,579

Non-Catholic
Private Schools

Montana Parochial Schools

27
1380
80
\$845,568

Total Number of Schools 46
Total Number of Students 10,265
Total Number of Teachers 533
*Total Savings to Taxpayers \$ 6,216,132
(Estimated Biennial Savings) \$13,000,000

	No. of Schools	No. of Parochial Students	Savings to tax- payers by paro- chial schools*
Billings	5	1567	\$ 908,360
Butte	3	1202	798,108
Great Falls	7	2057	1,364,081
Missoula	4	885	528,732
Anaconda	4	1160	729,013
Bozeman	2	136	85,162
Kalispell	1	192	96,192
Havre	1	373	186,873
Glasgow	1	196	88,200
Glendive	1	235	105,985
Lewistown	2	268	137,797
Livingston	1	165	82,500
Miles City	2	465	244,131
Deer Lodge	1	99	49,005
Malta	1	96	46,080
Shelby	1	100	52,400
Sidney	1	98	53,116
Wolf Point	1	132	62,964
Hardin	1	126	71,316
Pryor	1	51	30,600
Hayes	2	81	65,514
Ashland	2	474	365,375
St. Ignatius	1	107	64,628

TOTALS 46 10,265 \$6,216,628

*Dollar amounts are computed for each school district by average per pupil cost for 1969-70. Value of property and buildings not included.



